

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION**

FELICIA ROBINSON

PLAINTIFFS

v.

CIVIL ACTION NO: 1:19-CV-00121-SA-DAS

**WEBSTER COUNTY, MISSISSIPPI;
WEBSTER COUNTY SHERIFF'S DEPARTMENT;
TIM MITCHELL; SANTANA TOWNSEND;
DAREN PATTERSON; and
JOHN DOES 1-30**

DEFENDANTS

**MEMORANDUM IN SUPPORT OF DISMISSING
OF DUPLICATE OFFICIAL CAPACITY CLAIMS**

COME NOW, DEFENDANTS, Tim Mitchell (Officially), Santana Townsend (Officially), Webster County Sheriffs Department (Not Amenable to Suit) and Webster County (the Proper Party) by counsel, and respectfully submit these supporting authorities which warrant dismissal of duplicate official claims under federal law:

I. PREMISE

Tim Mitchell and Santana Townsend are named in their official capacities as duly sworn officers with the Webster County Sheriff's Department [**Doc. 1**, Complaint]. They are both merely duplicate official capacity defendants who should be dismissed according to well established authority.¹ Moreover, Webster County Sheriff's Department is not a person under 42 U.S.C. §1983.²

II. ARGUMENT AND AUTHORITY

¹*Estate of Manus v. Webster County*, 2014 U.S. Dist. LEXIS 43536, Pages 7-8 (N.D. Miss. Mar. 31, 2014).

²*Id.*

A “person” includes a local governing body if the action claimed to be unconstitutional implemented a “decision officially adopted and promulgated by that body’s officers.” *Monell v. Dep’t of Soc. Serv.*, 436 U.S. 658, 690 (1978). Moreover, suit against an officer in his official capacity is the same thing as a suit against the entity under federal law.

A department of a local governmental entity "must enjoy a separate legal existence" in order for it to be properly named as a defendant. *Darby v. Pasadena Police Dep’t*, 939 F.2d 311, 313 (5th Cir.1991) (citations and internal quotation marks omitted). "The capacity of an entity to sue or be sued 'shall be determined by the law of the state in which the district court is held.'" *Id.* (quoting Fed. R. Civ. P. 17(b) and holding that the Pasadena Police Department was subject to dismissal since it did not enjoy a legal existence separate and apart from the City of Pasadena). "In Mississippi, police and Sheriff's departments are not subject to suit because they do not enjoy a separate legal existence apart from their respective cities or counties." *Fuhgetaboutit, LLC v. Columbus Police Dep’t*, No. 1:10cv207, 2011 U.S. Dist. LEXIS 111141, 2011 WL 4529665, at *2 (N.D. Miss. Sept. 28, 2011) (citing *Brown v. Thompson*, 927 So. 2d 733, 737 (¶ 12) (Miss.2006)) (affirming the dismissal of the Bolivar County Sheriff's Department); see also *Stovall v. City of Hattiesburg*, No. 2:10cv84, 2010 U.S. Dist. LEXIS 49145, 2010 WL 1980313, at *1-2 (S.D. Miss. May 17, 2010) (dismissing the Hattiesburg Police Department since the City of Hattiesburg was the proper party).

When both an official and the entity are sued officially, normal practice is to dismiss the official in his official capacity because they are duplicative. *Breland v. Forrest Cty. Sheriff's Dep’t*, 2013 U.S. Dist. LEXIS 53503, at *12-13 (S.D. Miss. Apr. 15, 2013).

As a practical matter, the requested relief will ease confusion. Tim Mitchell and Santana Townsend are both represented individually by separate counsel. Currently, the docket gives the

impression that the undersigned has appeared for both individually. That is not the case. Having the County named as the only official capacity defendant will clarify this.

RESPECTFULLY SUBMITTED, this the 15th day of August, 2019.

JACKS | GRIFFITH | LUCIANO, P.A.

By: /s/ *Daniel J. Griffith*
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CERTIFICATE OF SERVICE

I, Daniel J. Griffith, attorney of record for Defendants, Tim Mitchell (Officially) and Santana Townsend (Officially), do hereby certify that I have this day caused a true and correct copy of the above and foregoing *Memorandum in Support of Dismissing Duplicate Official Capacity Claims* to be delivered by the ECF Filing System which gave notice to all counsel of record who have appeared herein.

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DATED this 15th day of August, 2019.

/s/ *Daniel J. Griffith*
Daniel J. Griffith